IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2464 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Petitioner(s)
Versus
R H BHAVSAR & 1 - Respondent(s)

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Appearance :
MR SN SINHA for Petitioner(s) : 1 - 3.
SUNITA S CHATURVEDI for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard the learned counsel for the parties. The petitioners - Union of India (Railways), being aggrieved by the order dated 22.10.1999 passed in Original Application No.810 of 1996 with M.A.No.778 of 1996 by the learned Central Administrative Tribunal, Ahmedabad Bench, are before this Court with the submission that the order is patently illegal, it is perverse and is contrary to the facts available on record.

2. The facts in short for disposal of the present writ application are that the present respondents submitted Original Application No.810 of 1996 before the Central Administrative Tribunal submitting, inter alia, that with effect from 5.5.1979 when they were working as Senior Clerks, they were getting Special Pay of Rs.35/- and on their promotion, their salary ought to have been saved, it should have been protected and on promotion as Head Clerk, it should have been fixed after taking into consideration the Special Pay of Rs.35/-.

3. The petitioners, who were - non applicants before the Tribunal, in their reply submitted that Special Pay of Rs.35/- was to be given to 10% of the Senior Clerks and the original applicants not falling within the said 10% were not getting the Special Pay. The respondents submitted that because of restructuring, 62 posts were upgraded and the present

respondents, who were otherwise not entitled to any promotion, were promoted as Head Clerks. The petitioners also submitted before the Tribunal that, as the original applicants were not getting Special Pay of Rs.35/-, the same was not required to be noted while making pay fixation.

4. The Tribunal, after hearing the parties, observed in para 3 that the original applicants were working as Senior Clerks and were in receipt of Special Pay of Rs.35/- with effect from 5.5.1979. In para 4, the Tribunal observed that in the reply filed by the respondents, fact of the applicants (original applicants) being entitled for Special Pay of Rs.35/- as UDC has not been disputed. The Tribunal also observed that the applicants would have been entitled to this Special Pay of Rs.35/- from the year 1.1.1984, and, therefore would have been entitled to Special Pay of Rs.35/- on this promotion also from 1.1.1984. The Tribunal also observed that by the circular observing the judgment of the Supreme Court it was observed that a person who had become UDC even prior to 1.9.1985 would be entitled to Special Pay.

5. We are referring to this observation made by the Tribunal because Mr.Sinha, learned counsel for the petitioners, has submitted that the order passed by the Tribunal is perverse, contrary to the facts available on record and the order is result of

misreading of the pleadings of the present petitioners.

6. It is to be seen that on 15.5.1985 the Western Railways had issued the memorandum wherein it was observed that 62 posts have been upgraded to the post of Head Clerk in scale of Rs.435-700. In the said list, at serial No.15 the name of Mr.B.N.Darji, Senior Clerk is shown, his scale is shown to be Rs.330-560 (R) + Rs.35/-. This goes upto to Mr.P.G.Shah who is at serial No.21. For serial No.22, Mr.C.G.Mane and thereafter the salary is shown as Rs.330-560 (R), additional amount of Rs.35/- is not shown against their salaries. From this, it would clearly appear that those persons were not getting the said salary on the said date. Learned counsel Ms.Chaturvedi, however, submits that persons at Item Nos.92, 93, 94 and others, i.e. A.A.Patel, Mrs.S.A.Jambekar, Smt.S.S.Desmukh who were too junior to the present respondents when were fixed in a particular pay-scale by order dated 31.1.1997 a sum of Rs.35/- as Special Pay was shown in their entitlement. She submits that if these persons, who were junior to the present respondents, were getting Rs.35/-, then the respondents' entitlement cannot be curtailed. To counter this argument, Mr.Sinha submits that immediately after promotion of the present respondents, the said three persons i.e. A.A.Patel, Mrs.S.A.Jambekar and Smt.S.S.Deshmukh and

others came within the zone of consideration, and, therefore they were paid Rs.35/- as Special Pay.

7. From the order passed by the learned Tribunal, it does not appear that all these questions were taken care of by the learned Tribunal. We must observe with respect to the authority of the Central Administrative Tribunal that it had misread the pleadings and has recorded the finding which is contrary to the record. What would have been entitlement of the present respondents would be different thing than what they were actually getting on the date of their promotion. The Tribunal mixed two issues and recorded wrong finding.

8. We are of the considered opinion that the Tribunal's order cannot be allowed to stand. It deserves to and is accordingly quashed. The matter is remitted to the Central Administrative Tribunal with a direction that it shall restore the matter to its original number, give proper opportunity to the parties to submit their case and shall record a detail reasoned judgment after taking into consideration that in fact, the original applicants were receiving special salary of Rs.35/- or not and what would be the effect of the same on their promotion as head clerks and, whether they were entitled to special salary, but were not getting the same then what would be the effect of the said

entitlement. Let the parties appear before the Central Administrative Tribunal on 24.4.2006 for taking further instruction from the said Tribunal.

9. We request the Tribunal to dispose of the matter at the earliest preferably within three months from the date of appearance of the parties. No costs. Rule is discharged.

(R.S.Garg,J)

(Sharad D.Dave,J)

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